



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 5, 1996

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR96-0891

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40248.

The City of Houston (the "city") received a request for information seeking all police documentation concerning two establishments which require city permits. You state that the city has released to the requestor the police department record of calls for service, the press release information, and the permit application information concerning the two establishments. You claim, however, that the remaining requested information is excepted from required public disclosure pursuant to sections 552.103 and 552.108 of the Government Code. You have submitted to this office for review the requested information which the city seeks to withhold.

We note that the request for information is from a state representative. Section 552.008 of the Government Code provides that a governmental body shall provide public information, including confidential information to a requesting member of the legislature if the requesting member states that the information is requested for legislative purposes. The requesting member in this instance does not appear to have stated that the information is being requested for legislative purposes. Section 552.008, therefore, is not applicable. Thus, we will address *your arguments that the information is excepted from disclosure.*

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you have made the requisite showing that the city is involved in pending litigation and that litigation is reasonably anticipated. *See* Open Records Decision 474 (1987) (contested cases conducted in a quasi-judicial forum are "litigation" under section 552.103). We also conclude that the documents submitted by the city are related to the litigation for the purposes of section 552.103(a). The documents may, therefore, be withheld pursuant to section 552.103.¹

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed.

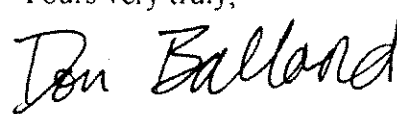
Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

¹ Because we resolve this matter pursuant to section 552.103 of the Government Code, we need not address your stated exception under section 552.108.

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 40248

Enclosures: Submitted documents

cc: The Honorable Ken Yarbrough
Texas House of Representatives
9617 West T.O. Jester, Suite F
Houston, Texas 77018
(w/o enclosures)